2025:DHC:161

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 21.11.2024

% Pronounced on : 14.01.2025

\+ **CRL.A. 557/2009**

DELHI ADMINISTRATION .....Appellant

Through: Mr. Laksh Khanna, APP for State

Versus

HARI CHAND ..... Respondent

Through: Mr.S.S. Dahiya, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the final order and judgement dated 01.07.2008 passed by learned ASJ, Patiala House Courts, New Delhi in Criminal Appeal No. 08/2003 under Sections 7/16 of the Prevention of Food Adulteration Act, 1954.

Vide the impugned judgement, the appeal against the judgement of conviction dated 07.02.2003 and the order of sentence dated 17.02.2003 passed by the MM, Delhi in case No. 82/96 of 14.10.1996, was allowed and the respondent (herein) was acquitted of the offences punishable under Sections 7/16 of the Prevention of Food Adulteration Act, 1954.

2. The facts, as noted by the Sessions Court, are as under:-

> *"The prosecution case, in brief, is that on 5.7.96 at about 3.00 pm, the Food Inspector Sh. Satish Kumar, purchased a sample of cow's milk from the appellant for analysis at M/s Bharat Dairy, J-501,Jahangir Pun, Delhi where the said food article was found stored for sale for human consumption and appellant was found conducting the business of the dairy. Sample of cow's milk was taken from an open drum having declaration as cow's milk and sample was taken after proper mixing with the help of clean and dry plunger. So purchased sample was divided into three equal parts and each part was packed, fastened, marked and sealed as provided in PFA Act. The one counter part of the sample was sent to Public Analyst for analysis in intact condition who opined that sample was did not conform to the prescribed standards. Thereafter, the sanction for prosecution was obtained from the competent authority and complaint was filed against the appellant"*

3. Notice under Section 251 Cr.P.C for the commission of offence punishable under Section 16(1) read with Sections 7/16 of the PFA Act was given to the respondent, to which he pleaded not guilty and claimed trial.

4. In trial, a total of 3 witnesses were cited by the prosecution to prove its case i.e. PW-1 Food Inspector Sh. Satish Kumar Gupta PW-2 Sh. S.K. Nagpal, A.I.H.A. and PW-3 Sh. Shyam Lal Food Inspector.

On the other hand, the accused person, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and that he had been falsely implicated in the case.

5. On behalf of the appellant, the impugned judgment has been assailed on the ground that the Sessions Court has failed to appreciate the testimonies of PW1 and PW2, who have categorically deposed as to the detailed procedure followed while obtaining the sample milk and have stated that the milk was properly mixed/homogenized in the container itself before taking the sample. Learned Counsel further

states that the stand of the respondent that the milk was not homogenised needs rejection as at the time when the food inspector had visited, the respondent was already selling the milk from the container which was ready for human consumption. In this regard, attention is drawn to the 313 Cr.P.C statement of the respondent. It is further submitted that the report of CFL which pointed out the sample to be adulterated was called by the respondent himself and is thus binding upon him. It is lastly submitted that an acquittal in the present case would negate the intention of the PFA Act which is to keep a check on the societal evil of food adulteration.

6. Learned Counsel for the respondent, while opposing the present appeal, defended the impugned judgment. It is stated that the sample was not properly packed. It is also added that the respondent was not the proprietor of the dairy and that the sample collected by the Food Inspector was not properly homogenised, and as such, could not be considered as an accurate representative. It is lastly emphasized that the respondent was rightly acquitted in light of the material that had come on record and based on the testimony of the witness produced.

7. I have heard the counsels for the parties and have perused the material which has come on record.

8. The primary issue raised in the present appeal pertains to whether the sample collected by the Food Inspector could be considered as an adequate representation considering the contention of the respondent that the same was not homogenised at the time of collection. A perusal of the material available would show that two

reports have come on record, the first being that of the public analyst, exhibited as Ex PW1/E and the second being the certificate issued by the Director, CFL, exhibited as Ex. PX. As per the report submitted by the public analyst, the fat contents of the sample cow milk were reflected as 4.7% as opposed to the percentage shown in the certificate of the Director, CFL which showed the fat contents to be 3.3%. Similarly, while the public analyst report showed the milk solids not fat to be 7.53%, the certificate issued by the CFL reflects the milk solids not fat to be 6.9 %. The question which falls before this Court is whether the variance between the report of the public analyst and that of the CFL could be considered of such a degree so as to conclude that the sample collected by the Food Inspector is not of representative character. Reference in this regard is made to the case of "<u>State v. Ravinder Nath Chawla</u>" reported as **2010:DHC:14382**, wherein the High Court while noting the variance in the report of the public analyst and that of the CFL came to the following conclusion:-

> " 5. *Appellate Court was of the view that the respondent was entitled to benefit of doubts as the report of Public Analyst was not in line with the report of CFL, inasmuch as, there were variations in both the reports. As per the Public Analyst, milk fat contents were not found less than the prescribed standard; whereas as per the report of CFL milk fat was found less than the prescribed limit. There was variance even with regard to the milk solids not fat content. Public Analyst found the same to be 6.78%; while as per CFL report it was 7.5%. For these reasons, Appellate Court noted that the samples were not of representative character.*
> 6. *In view of the aforegoing facts, I do not find any perversity or manifest error in the order passed by the Appellate Court, inasmuch as there is large variance in the reports of the Public Analyst and CFL making the respondent entitled to benefit of doubt."*

This Court takes note of the fact that in the present case, while the report of the public analyst shows the fat contents of the sample to be above the prescribed limit of 3.5%, the CFL certificate shows a percentage which is less than the same. There is also a substantial variance in the two reports with respect to the milk solids not fat as the public analyst shows the percentage to be 7.53% as opposed to 6.9% reflected in the CFL certificate.

9. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi)**,** reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

> *"**8.** Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Criminal Procedure Code (for short "CrPC") while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*
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> > *"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.""*

10. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

> *"**14.1.** In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)*
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> *"...*
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> *13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)*
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> ***'… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'***
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> *14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Balbir Singh v. State of Punjab [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Khedu Mohton v. State of Bihar [Khedu Mohtonv. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736]*

and State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under: (SCC p. 432, para 42)…

> ***(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.***
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> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'*

16. In Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh [State of Rajasthan v. Naresh, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

> *'20. … An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'*

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17. *Even in G. Parshwanath [G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027] , this Court has in paras 23 and 24 observed as under: (SCC pp. 602-03)*

*"23**. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn***

should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. *Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.*

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court." (emphasis supplied) "

11. Consequently, in view of the variance in the percentages reflected in the report of the public analyst and the CFL certificate and keeping in mind the principles cited in the above-noted case law, this

Court finds no infirmity in the order of the Ld. Sessions Court. The appeal is accordingly dismissed.

12. A copy of this judgment be communicated to the concerned court alongwith the records.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 14, 2025/*js*